

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

NOBILIS HEALTH CORP., *et al.*¹

Debtors.

**ALFRED T. GIULIANO, in his capacity as
Chapter 7 Trustee for the jointly
administered bankruptcy estates of Nobilis
Health Corp., *et al.*,**

Plaintiff,

v.

HARRY J. FLEMING, *et al.*,

Defendants.

Chapter 7

**Case No. 19-12264 (CTG)
(Jointly Administered)**

Adv. No. 21-51183-CTG

Re: Adv. Docket Nos. 106, 113, 117, 121

**DECLARATION OF STEVEN M. COREN IN SUPPORT OF THE
TRUSTEE'S REQUEST FOR DISCOVERY PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 56(d) AND IN OPPOSITION
TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

I, Steven M. Coren, hereby declare as follows:

1. I am admitted *pro hac vice* as special counsel to Alfred T. Giuliano, Chapter 7 Trustee (the "Trustee") for Debtors in the above-captioned adversary proceeding.
2. I make this declaration on my own knowledge and belief in support of the Trustee's request for discovery pursuant to Federal Rule of Civil Procedure 56(d) and in support of the

¹ Debtors are: Northstar Healthcare Holdings, Inc., Case No. 19-12262; Northstar Healthcare Acquisitions, L.L.C., Case No. 19-12263; and Nobilis Health Corp., Case No. 19-12264.

Trustee's Omnibus Memorandum In Opposition to Defendants' Motions for Summary Judgment (the "Opposition").

3. On August 31, 2022, the Court entered the parties' agreed scheduling order, which contains among other provisions, the following deadlines: (a) fact discovery shall be completed by April 28, 2023; (b) Plaintiff's expert disclosures shall be due on or before June 2, 2023; and (c) case dispositive motions shall be filed on or before October 6, 2023, with answering briefs due on or before November 1, 2023. [D.I. 91].

4. The Trustee's Complaint quoted from and attached as an exhibit, the complaint filed by Nobilis's lender, BBVA USA ("BBVA") against Defendants Fleming, Young and Moreno in Texas state-court proceedings captioned: BBVA USA v. Fleming *et al.*, Cause No. DC-20-07462 (44th Judicial Ct., Dallas Cty., Texas) (the "BBVA Action"). The BBVA Action was settled in late September 2022.

5. To streamline discovery in this case, the Trustee requested, and Defendants have produced discovery from the BBVA Action, including documents, electronic discovery, deposition transcripts, etc., along with the briefs, expert reports, and evidence submitted to the Texas court in the summary judgment proceedings. The parties have stipulated to the use in this case of discovery from the BBVA Action (except for expert materials). [D.I. 127, Stipulation Regarding Use of Discovery from Other Proceeding].

6. Defendants' electronic discovery production in this case commenced on December 12, 2022, with the production of 754 files totaling 3.48GB.

7. On December 29, 2022, Defendants produced 385MB of electronic information, containing 118 files and 5,545 pages of pdfs.

8. On January 4, 2023, Defendants produced 1.32TB of electronic information

containing 2,166,314 files.

9. Defendants made an additional production on January 23, 2023—the day before the parties’ mediation (which was ultimately unsuccessful). This production totaled 27GB, containing 92,187 files from the Debtors’ former auditor (a total of 81,147 pages).

10. The Trustee’s team is reviewing the electronic document productions. Given the substantial volume of materials produced to date, that review will take more time. The Trustee requires time to complete his review—especially his review of the documents from the Debtors’ former auditor—for use in opposing Defendants’ motions for summary judgment.

11. No depositions have occurred in this case.

12. Although the BBVA Action discovery will substantially streamline discovery in this case, the Trustee intends to take depositions and to engage one or more experts to render opinions in support of his claims.

13. The Trustee intends to conduct depositions, including, but not necessarily limited to those of: (i) Defendant Fleming; (ii) Defendant Efird; (iii) Defendant Rodriguez; (iv) Defendant Ozonian (who was not deposed in the BBVA Action); (v) Defendant Young; (vi) Defendant Moreno; (vii) representative(s) of Crowe Horwath LLP (Debtors’ former auditor); (viii) Kenneth Klein (Debtors’ former CFO and CFO of Operations); and, (ix) representative(s) from Morris Anderson (Debtors’ former consultant). The Trustee anticipates that these depositions will reveal additional facts to support the Trustee’s Opposition.

14. The first eight deponents named above were identified in Defendants’ Initial Disclosures as “individual[s] likely to have discoverable information . . . that [Defendants] may use to support [their] claims or defenses.” *See Opp. App. Ex. 74.*

15. Plaintiff anticipates offering expert opinion testimony on the accounting, financial, SEC reporting and system failures underlying the Trustee's breach of fiduciary duty claims, along with expert opinion testimony on damages. Under the Scheduling Order, Plaintiff's expert disclosures are due June 2, 2023. [D.I. 91 at ¶ 3].

16. As set forth in the Opposition, the above-described discovery efforts are expected to further support the Trustee's position that disputed issue of material fact preclude summary judgment on the Trustee's breach of fiduciary duty claims.

17. The Trustee has been unable to complete discovery on facts relevant to Defendants' dispositive motions despite his best efforts and respectfully requests that he be afforded the time to which he is entitled under the parties' agreed scheduling order.

18. The Trustee's request for and reliance on discovery in the BBVA Action was reasonable and efficient – as facts discovered in the BBVA Action are relevant to and supportive of the Trustee's claims in this case. The materials otherwise reasonably available to the Trustee were no substitute for the BBVA Action discovery, especially the 21 depositions of witnesses with knowledge relevant to the Trustee's case and the numerous documents about which they testified.

19. True and correct copies of the documents cited in the Opposition are contained in the Opposition Appendix filed herewith as follows:

App. Ex. No.	Date	Description	BBVA Dep Ex.
1	4/1/22	Deposition testimony of David P. Young (selected pages)	
2	12/31/17	Nobilis Health Corp. Form 10-K for the fiscal year ending 12/31/17	
3	5/26/17	Email from Harry Fleming to Don Kramer, et al., re: Status of Elite Acquisition (Dep. Ex. 215, Bates NOB.EML_00138130)	215
4	4/19/22	Deposition testimony of Harry Fleming (selected pages)	
5	10/23/17	Email string between Harry Fleming, Sava Kobilarov, et al., re: NDR follow-up (Bates NOB.EML_00493962)	

App. Ex. No.	Date	Description	BBVA Dep Ex.
6	12/31/16	Nobilis Health Corp. Form 10-K for the fiscal year ending 12/31/16	
7	12/31/14	Nobilis Health Corp. Form 10-K/A for the fiscal year ending 12/31/14	
8	03/01/06	Email string between Marcos Rodriguez, Harry Fleming, et al., re: SOX Internal Controls Assessment and Documentation (Bates NOB.EML_00137377 to NOB.EML_00137378)	
9	5/26/16	Email from Marcos Rodriguez to Steve Ozonian, et al., re: Financial Reporting and SOX Project Plans, with attachment (Bates NOB.EML_00137661 to NOB.EML_00137662)	
10	11/17/16	Email string between Marcos Rodriguez, Steve Ozonian, et al., re: SOX Documentation (Bates Nobilis_00257231 to Nobilis_00257729) [FILED UNDER SEAL]	
11	11/17/19	Email between Steve Ozonian, Marcos Rodriguez, et al. re: SOX Documentation (Bates NOB.EML00464698)	
12	12/5/16	Email sent on behalf of the Chief Accounting Officer (Defendant Rodriguez) re: Management News Blast: Internal Controls and Business Processes with attachment (Bates: NOB.EML_00131530 to NOB.EML_00131532)	191
13	3/31/17	Revenue to Cash report by Marcos Rodriguez (Bates Nobilis_00222812 to Nobilis_00222818) [FILED UNDER SEAL]	
14	3/23/22	Deposition testimony of Brandon Moreno (selected pages)	
15	5/4/22	Deposition testimony of Laura Edwards (selected pages) [FILED UNDER SEAL]	
16	12/31/17	Crow Insight – Summary of Significant Decisions (Bates CROWE0002660 to CROWE0002666) [FILED UNDER SEAL]	362
17	5/5/22	Deposition testimony of Amanda Lockhart (selected pages) [FILED UNDER SEAL]	
18		Memo from A. Lockhart to File re: AFDA and Lookback Analysis (Bates CROWE0030902 to CROWE0030911) [FILED UNDER SEAL]	377
19	2/28/18	Email string between David Young and Marcos Rodriguez and Brandon Moreno re: AR/Revenue Recap (Bates NOB.EML_00059451)	140
20	2/28/17	Email from Harry Fleming to Ken Efird re: Revenue Recognition Committee (Bates NOB.EML_00138211)	89
21	12/17/18	Email string between Sam Palermo, Ken Efird, et al., re: FW: Rev Cycle Committee Minutes, with attachment (Bates NOB.EML_00167500 to NOB.EML_00167508)	90
22	4/21/22	Deposition testimony of Kenneth Efird (selected pages)	

App. Ex. No.	Date	Description	BBVA Dep Ex.
23	3/7/17	Email from Renee Li to Harry Fleming, Ken Efird and Marissa Arreola with attachment (Bates NOB.EML_00134389_001 to NOB.EML00134389_019)	229
24	1/7/22	Defendant Harry J. Fleming's Objections and Answers to Plaintiff's First Set of Interrogatories	
25	8/20/19	Email string between David Young, Patrick Yoder, et al., re: Weekly Management Report 8.16.2017 (Bates NOB.EML_00191850 to NOB.EML_00191851)	
26	8/10/17	Email string between Suman Smith and David Young, et al. re: Q1 sub cash (Bates NOB.EML_00112710)	138
27	9/28/17	Email string between David Young, Ken Efird, et al., re: Fwd: Revenue by Channel for Q3 (Bates NOB.EML_00115535_0001 to NOB.EML_00115535_0014)	234
28	9/5/17	Email string between Ken Klein, David Young, et al., re: Daily Collection Log Sept 2017 (Bates NOB.EML_00192953 to NOB.EML_00192953)	194
29	2/11/19	Email string between Brandon Moreno, Rob Novak re: Nobilis Diligence Items, with attachments (Bates NOB.EML_00094032 to NOB.EML_00094034)	107
30	9/25/17	Email string between David Young, Patrick Yoder, et al., re: Fwd: Weekly Management Report 9.21.2017, with attachment (Bates NOB.EML_00115406 to NOB.EML_00115407)	328
31	9/28/17	Email string between David Young, Ken Efird, et al., re: Fwd: Revenue by Channel for Q3, with attachment (Bates NOB.EML_00115540 to NOB.EML_00115541)	231
32	7/31/17	Email string between Susan Mallek, Steve Ozonian, et al., re: 8.2.17 Audit Committee Meeting, with attachments (Bates Nobilis_00222708 to Nobilis_0022896) [FILED UNDER SEAL]	165
33	4/25/22	Deposition testimony of James William Simpson (selected pages)	
34	4/14/22	Deposition testimony of Kenneth Klein (selected pages)	
35	9/28/17	Email string between Patrick Yoder, David Young, et al., re: Revenue by Channel for Q3 (Bates NOB.EML_00114370_0001 to NOB.EML_00114370_0003)	329
36	10/3/17	Email from Patrick Yoder to David Young re: Q4 Revenue Projects, with attachment (Bates NOB.EML_00113579 to NOB.EML_00113580)	
37	10/3/17	Email from Ken Efird to Ashley Gillaspia re: Fwd: Q4 Revenue Projections.xlsx, with attachment (Bates NOB.EML_00175930 to NOB.EML_00175931)	241
38	10/03/17	Email string between Ashley Gillaspia, Ken Efird re: Q4 Revenue Projections (Bates NOB.EML_00494045)	

App. Ex. No.	Date	Description	BBVA Dep Ex.
39	10/24/17	Email string between Christopher Deming, Brandon Moreno re: June LP PPT copy, with attachment (Bates BBVA_00024267 to BBVA_00024268)	75
40	10/18/17	Email from Brandon Moreno to Cara Younger and Jean Pooley re: Cash Waterfall Report_thru SEPT 2017 with attachment (Bates NOB. EML_00107271 to NOB. EML_00107272)	103, 104
41	10/4/17	Email string between David Young, Ken Efird, et al. re: update (Bates: NOB.EML_00115239)	
42	10/5/17	Email between David Young, Nick Lloyd, et al., re: ASD (Bates NOB.EML_00115210)	135
43	10/6/17	Email from Brandon Moreno to David Young, et al., re: Q3 2017 Rev & AR summary (10.6.17), with attachments (Bates NOB.EML_00191339 to NOB.EML_00191340)	199
44	9/30/17	Nobilis Health Corp. Form 10-Q (Bates NOB.EML_00013244)	113
45	10/19/18	Email between Jason Consoli, Ken Klein re: [EXTERNAL] FW: A/R, with attachments (Bates Nobilis_00407944 to Nobilis_00407975) [FILED UNDER SEAL]	163
46	3/3/18	Email from Laura Edwards to Brandon Moreno, et al. re: Updated 2016 AR memo (Bates NOB.EML_00058804)	373
47	2/26/18	Email string between Todd Spaanstra, David Young, et al., re: 2016 Facility AR collectability (Bates NOB.EML_00063112 to NOB.EML_00063112)	91
48	8/6/16	Nobilis Health Information Request list (Bates BVA_00034049_native)	33
49	2/15/22	Deposition testimony of Cara Younger (selected pages) [FILED UNDER SEAL]	
50	4/11/22	Deposition testimony of Jason Consoli (selected pages) [FILED UNDER SEAL]	
51	2/22/22	Deposition testimony of Jonathan McCurdy (selected pages)	
52	5/10/22	Expert Report of John Riley [FILED UNDER SEAL]	
53	10/18/17	Email string between Harry Fleming, Michael Gobes, et al., re: Nobilis Health/Opc (Bates NOB.EML_00493964)	
54	5/10/22	Expert Report of Stanley A. Murphy [FILED UNDER SEAL]	
55	9/30/17	Nobilis Health Corp. Form 10-Q with attached certifications of CEO and CFO	
56	2/23/18	Memo from Brandon Moreno to Accounting Files re: 12/31/16 Accounts Receivable [FILED UNDER SEAL]	21
57	3/2/17	2017 Strategic Plan (Bates NOB.EML_00138209)	
58	3/12/17	Email string between David Young, Marcos Rodriguez, et al., re: Management Letter Response (Bates NOB.EML_00449999) and Email from Marcos Rodriguez to	170

App. Ex. No.	Date	Description	BBVA Dep Ex.
		Amanda Lockhart, et al., re: Management Letter Draft, with attachment (Bates NOB.EML_00134369 to NOB.EML_00134371)	
59	3/4/17	Email string between Clayton Kamin, Marcos Rodriguez, et al., re: IT Meeting (Bates NOB.EML_00455945)	
60	7/12/17	Email string between David Young, Steve Ozonian re: Reg. 240.14a-101 – Proxy Schedule 14A requirements – Independent Public Accountants (Bates NOB.EML_00133254 to NOB.EML_00113254)	
61	11/6/17	Letter to Crowe Horwath LLP (Bates CROWE0001621_001 to CROWE0001621_006) [FILED UNDER SEAL]	375
62	10/10/17	General U.S. GAAP Interim Financial Statement Disclosures Checklist (Bates CROWE0001702_001 to CROWE0001702_251) [FILED UNDER SEAL]	176
63	4/13/22	Deposition testimony of Marcos Rodriguez (selected pages)	
64	9/30/17	SEC Form 10-Q Checklist for Financial and Nonfinancial Disclosures (Bates CROWE0017355_001; DEFENDANTS 0006639 to DEFENDANTS 0006700) [FILED UNDER SEAL]	178
65	12/31/17	Crowe Insight – Client Interview, Marcos Rodriguez (Bates CROWE0002634_001 to CROWE0002634_001) [FILED UNDER SEAL]	374
66	11/9/18	Nobilis Health Corp. Form 8-K	
67	11/9/18	Press Release: <i>Nobilis Health Announces Filing of Form 12b-25</i>	
68	9/3/19	Nobilis Health Corp. Form 8-K	
69	5/30/19	Nobilis Health Corp. Form 8-K	
70	3/28/19	Approval Request Memorandum from ARMS to US Credit Committee re: Nobilis Health Corp. – Request to Fund Super Priority Facility (Bates BBVA_00028192_native)	48
71	1/31/17	Email from Randy Stein to Tuhin Pankaj re: CBO issues and Priorities (Bates NOB.EML_00352914_0001 to NOB.EML_00352914_0003)	252
72	4/22/22	Deposition testimony of Tuhin Pankaj (selected pages)	
73	6/1/17	Email from Suman Smith to Tuhin Pankaj re: Revenue Cycle Strategy – Meeting with David with attachment (Bates NOB.EML_00264256_0001 to NOB.EML_00264256_0017)	265
74	9/9/22	Defendants' Initial Disclosures	
75	9/28/22	Plaintiff's First Set of Requests for Production of Documents Directed to Defendants	
76	11/21/22	Plaintiff's Answers and Objections to Defendants' First Set of Interrogatories	
77	2/13/20	Statement of Chapter 7 Trustee Regarding Filing of Debtors' Schedules and Statements of Financial Affairs (Doc. 102)	

App. Ex. No.	Date	Description	BBVA Dep Ex.
78	2/13/20	Statement of Chapter 7 Trustee Regarding Filing of Debtors' Schedules and Statements of Financial Affairs (Doc. 105)	
79	6/30/18	Nobilis Health Corp. Form 10-Q	
80	10/4/17	Email from Brandon Moreno to Will Simpson re: update (Bates NOB.EML_00249431)	27

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 20, 2023

/s/ Steven M. Coren
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